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12 CELTIC CAPITAL CORPORATION

13 UNITED STATES BANKRUPTCY COURT
14 FOR THE DISTRICT OF OREGON

15 In re
16 4 HIM FOOD GROUP, LLC, an OREGON
CORPORATION dba COSMOS CREATIONS,
17
18 Debtor.

Case No. 19-62049-tmr11

SECURED CREDITOR CELTIC CAPITAL CORPORATION'S LIMITED OPPOSITION TO DEBTOR'S MOTION FOR ORDERS (1) AUTHORIZING AND SCHEDULING AN AUCTION FOR THE SALE OF SUBSTANTIALLY ALL ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS AND OTHER INTERESTS, (2) APPROVING SALE PROCEDURES, (3) APPROVING PROCEDURES FOR ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (4) APPROVING PURCHASE AGREEMENT OR SUBSEQUENT OVERBID, (5) SCHEDULING A HEARING TO CONSIDER APPROVAL OF THE SALE, (6) ESTABLISHING THE FORM AND MANNER OF NOTICES RELATING THERETO, AND (7) REQUESTING WAIVER OF THE STAY UNDER BANKRUPTCY RULE 6004(F) AND 6006(D)

INTRODUCTION

Celtic Capital Corporation (“Celtic”), while reserving all rights, at present opposes the Debtor’s Sale Motion only insofar as it does not provide for Celtic to be paid on the sale closing date directly from the sale proceeds. Celtic holds the senior lien on Debtor’s equipment¹ and a blanket lien on Debtor’s other personal property potentially junior in priority only to the lien of stalking horse Dominguez Family Enterprises, Inc. (“Dominguez”). Celtic’s liens are perfected and unavoidable and secure a claim in an amount not less than \$1,088,279.11 as of Debtor’s bankruptcy petition date (“Petition Date”). Any post-closing delay in paying Celtic would not be in the best interests of the estate and its creditors as it would only result in the accrual of additional post-petition interest on Celtic’s claim.

STATEMENT OF RELEVANT FACTS

A. Celtic’s Secured Claim

Celtic filed its Proof of Claim on July 29, 2019, and filed an amended Proof of Claim on August 19, 2019, in each case describing the basis for Celtic’s secured claim and the amount of the claim as of the Petition Date. (See Claims Dkt. No. 17.)

In summary, Celtic’s claim arises from a loan to Debtor in the original principal amount of \$1,115,583.35 (“Term Loan”). The Term Loan is secured by a security interest in substantially all of Debtor’s present and future personal property, and all proceeds thereof, including without limitation Debtor’s accounts, inventory, and equipment (“Collateral”). Celtic perfected its security interest in the Collateral by filing a UCC Financing Statement with the Oregon Secretary of State on August 29, 2018. Around that time, Celtic entered into Lien Subordination Agreements with 2 Loris, LLC, and Columbia State Bank, whereby these creditors agreed to subordinate their interest in the Collateral to Celtic’s interest therein.

Celtic and Dominguez subsequently entered into a Mutual Lien Subordination Agreement dated March 22, 2019, whereby (a) Dominguez agreed to subordinate its security interest in the Celtic First-Priority Collateral (defined to include Debtor’s present and future equipment and all proceeds

¹ Celtic’s senior priority security interest extends to equipment and related assets as set forth in that certain Mutual Lien Subordination Agreement dated March 22, 2019.

1 thereof) to Celtic's security interest therein, and (b) Celtic agreed to subordinate its security interest in
2 the Dominguez First-Priority Collateral (defined to include substantially all Debtor's personal property
3 other than the Celtic First-Priority Collateral) to Dominguez' security interest therein.

4 As of the Petition Date, Debtor owed Celtic not less than \$1,088,279.11 on the Term Loan,
5 including a \$1,076,544.50 principal balance, \$11,184.61 in unpaid interest for June 2019 accrued at
6 the contract interest rate, and \$550.00 in legal fees.

7 B. The Adequate Protection Order

8 On August 1, 2019, the Court entered its Order Authorizing Use of Cash Collateral and
9 Granting Adequate Protection, whereby the Court granted Celtic (and other putative secured creditors)
10 replacement liens on Debtor's post-petition assets (other than surcharge and avoidance rights) of the
11 same nature and kind, and with the same priority, as the prepetition liens. (Dkt. No. 40.) As further
12 adequate protection, the Court ordered Debtor to make \$15,000 payments to Celtic on August 15,
13 September 16, and October 15, 2019. (Id.)

14 C. The Sale Motion

15 The Sale Motion, filed August 19, 2019, contemplates a free-and-clear sale of substantially all
16 of Debtor's assets to Dominguez for \$9,000,000 cash (with \$1,000,000 allocated to Debtor's
17 equipment and \$8,000,000 allocated to Debtor's real property) plus (i) assumption of Assumed
18 Liabilities (as defined therein); and (ii) a credit in the amount of Dominguez' secured claim against the
19 book value of Debtor's inventory and current accounts receivable, all subject to overbid and as set
20 forth in more detail therein. (Dkt. No. 48.) Notwithstanding Celtic's receipt of adequate protection
21 payments, it appears the cash proceeds allocated for equipment will be insufficient to fully satisfy the
22 amount of Celtic's secured claim.

23 ARGUMENT

24 Unless Celtic (and all other lienholders) are paid in full from the sale, Debtor may sell its assets
25 only with Celtic's consent. See 11 U.S.C. § 363(f).

26 Celtic, while reserving the right to offer further opposition to Debtor's contemplated asset sale
27 depending on future developments, at present opposes the Sale Motion only insofar as it does not
28 provide for Celtic to be paid on the sale closing date directly from the sale proceeds. At minimum,

1 Celtic should be paid all sale proceeds attributable to Debtor's equipment (and such other related
2 assets), presently in the amount of \$1,000,000.

3 Celtic's Proof of Claim was filed more than five weeks ago and sets forth in detail the basis for
4 Celtic's secured claim. No party in interest has filed an objection to Celtic's claim, which is therefore
5 at present deemed allowed pursuant to 11 U.S.C. § 502(a). By the time of any hearing on the Sale
6 Motion, all parties in interest (including Debtor, the Creditors' Committee, and putative secured
7 creditors) will have had ample opportunity to evaluate the merits of Celtic's claim. There is therefore
8 no reason to delay paying Celtic when the sale closes. Any delay would only result in the accrual of
9 additional post-petition interest on Celtic's claim, pursuant to 11 U.S.C. § 506(b), to the detriment of
10 other creditors and the bankruptcy estate.

11 CONCLUSION

12 For the foregoing reasons, Celtic requests that the Court grant the Sale Motion, if at all, only
13 with the modifications requested herein.

14 DATED: September 3, 2019

HEMAR, ROUSSO & HEALD, LLP

15 BY: /s/ Christopher D. Crowell
16 J. Alexandra Rhim
17 Christopher D. Crowell
18 Attorneys for Secured Creditor
19 CELTIC CAPITAL CORPORATION
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CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and am not a party to the within action or proceeding. I am employed by the law firm of Hemar, Rouso & Heald, LLP, located at 15910 Ventura Blvd., 12th Floor, Encino, CA 91436, Telephone: (818) 501-3800.

I certify that on September 3, 2019, I have caused this **SECURED CELTIC CAPITAL CORPORATION'S LIMITED OPPOSITION TO DEBTOR'S MOTION FOR ORDERS (1) AUTHORIZING AND SCHEDULING AN AUCTION FOR THE SALE OF SUBSTANTIALLY ALL ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS AND OTHER INTERESTS, (2) APPROVING SALE PROCEDURES, (3) APPROVING PROCEDURES FOR ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (4) APPROVING PURCHASE AGREEMENT OR SUBSEQUENT OVERBID, (5) SCHEDULING A HEARING TO CONSIDER APPROVAL OF THE SALE, (6) ESTABLISHING THE FORM AND MANNER OF NOTICES RELATING THERETO, AND (7) REQUESTING WAIVER OF THE STAY UNDER BANKRUPTCY RULE 6004(F) AND 6006(D)** to be served on interested parties requesting notice through the Court's CM/ECF system in the form and manner required by LBR 5005-4(d), on the following parties as indicated below:

SEE ATTACHED NEF SERVICE LIST

XX (Federal) I declare under penalty of perjury under the laws of the United States of America that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 3, 2019, at Encino, California.



SANAZ ADNANI

COURT NEF SERVICE LIST

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